



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA-R04-OW-2016-0354; FRL-9995-38-Region 4]

Ocean Dumping: Modification of an Ocean Dredged Material Disposal Site Offshore of Mobile, Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a modification of the existing EPA designated ocean dredged material disposal site (ODMDS) offshore of Mobile, Alabama (referred to hereafter as the existing Mobile ODMDS) pursuant to the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). The primary purpose for the site modification is to enlarge the site to serve the long-term need for a location to dispose of suitable material dredged from the Mobile Harbor Federal navigation channel, and for the disposal of suitable dredged material for persons who receive an MPRSA permit for such disposal. The modified site will be subject to monitoring and management to ensure continued protection of the marine environment.

DATES: Written comments must be received on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OW-2019-xxxx, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments and accessing the docket and materials related to this proposed rule.

- E-mail: weiss.lena@epa.gov
- Mail: Lena Weiss, U.S. Environmental Protection Agency, Region 4, Water Division, Oceans and Estuarine Management Section, 61 Forsyth Street, Atlanta, Georgia 30303.

Instructions: Direct your comments to Docket ID No. EPA-R04-OW-2019-xxxx. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy during normal business hours from the regional library at the EPA, Region 4 Library, 9th Floor, 61 Forsyth Street, Atlanta, Georgia 30303. For access to the documents at the Region 4 Library, contact the Region 4 Library Reference Desk at (404) 562-8190, between the hours of 9:00 a.m. to 12:00 p.m., and between the hours of 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays, for an appointment.

FOR FURTHER INFORMATION CONTACT: Lena Weiss, U.S. Environmental Protection Agency, Region 4, Water Division, Oceans and Estuarine Management Section, 61 Forsyth Street, Atlanta, Georgia 30303; phone number (404) 562-9228; e-mail: weiss.lena@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval to dispose of dredged material into ocean waters pursuant to the MPRSA, 33 U.S.C. 1401 to 1445. The EPA's proposed action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Mobile, Alabama. Currently, the U.S. Army Corps of Engineers (USACE) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal government ...	USACE Civil Works projects, and other Federal agencies
Industry and general public ...	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners

State, local and tribal governments ...	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects
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This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding “FOR FURTHER INFORMATION CONTACT” section.

II. Background

a. History of disposal sites offshore of Mobile, Alabama

There is currently one designated ODMDS off the coast of Mobile, Alabama. The existing Mobile ODMDS is located between two and six miles south of Dauphin Island in the Gulf of Mexico. It is currently 4.75 square nautical miles (nmi²) in size. The Mobile ODMDS received interim site designation status in 1977 and final designation in 1987.

The USACE Mobile District and the EPA Region 4 have identified a need to either designate a new ODMDS or modify the existing Mobile ODMDS. The need for modifying current ocean disposal capacity is based on future capacity requirements, historical dredging volumes, estimates of dredging volumes for future proposed projects, and limited capacity of upland confined disposal facilities (CDFs) in the area.

EPA today is proposing to modify, or expand, the existing Mobile ODMDS rather than designate a new site off the coast of Mobile for ocean disposal of dredged material. The proposed modification of the existing Mobile ODMDS for dredged material does not mean that the USACE or the EPA has approved the use of the existing Mobile ODMDS or a modified Mobile ODMDS for open water disposal of dredged material from any specific project. Before any person can ocean dump dredged material at the existing Mobile ODMDS or a modified

Mobile ODMDS, the EPA and the USACE must evaluate the project according to the ocean dumping regulatory criteria (40 CFR part 227) and USACE must authorize the disposal. The EPA independently evaluates proposed dumping and has the right to restrict and/or disapprove of the actual disposal of dredged material if the EPA determines that environmental requirements under the MPRSA have not been met. This action is supported by a Draft Environmental Assessment, which was provided for public notice and comment in September of 2018.

b. Location and configuration of the Proposed Modified Mobile ODMDS

This action proposes the modification of the existing Mobile ODMDS. The proposed modified ODMDS is in approximately 34 to 57 feet of water and is located between 2.0 and 6.0 nautical miles south of Dauphin Island, Alabama. The proposed modified ODMDS would expand the existing Mobile ODMDS from a size of approximately 4 nmi² to approximately 23.8 nmi² in size. The location of the proposed modified ODMDS is bounded by the coordinates listed below. The proposed coordinates for the site are in North American Datum 83 (NAD 83):

Proposed Modified Mobile ODMDS

- A) 30° 13.0' N, 88° 08.8' W
- B) 30° 09.6' N, 88° 04.8' W
- C) 30° 08.5' N, 88° 05.8' W
- D) 30° 08.5' N, 88° 12.8' W
- E) 30° 12.4' N, 88° 12.8' W

The proposed modification of the existing ODMDS will allow the EPA to adaptively manage the site to maximize its capacity, minimize the potential for mounding and associated safety concerns, and minimize the potential for any long-term adverse effects to the marine environment.

c. Management and Monitoring of the Site

The proposed modified ODMDS is expected to receive dredged material from the federally authorized navigation project at Mobile Harbor, Alabama, and dredged material from other applicants who have obtained a permit for the disposal of dredged material at the proposed modified ODMDS. All persons using the site will be required to follow the Site Management and Monitoring Plan (SMMP) for the ODMDS that is specifically developed for the proposed modified ODMDS. A draft SMMP for the proposed modified ODMDS was been publicly reviewed and will be finalized by the EPA Region 4 and the USACE Mobile District prior to a final decision on this rule. The SMMP includes management and monitoring requirements to ensure that dredged materials disposed at the proposed modified ODMDS are suitable for disposal in the ocean and that adverse impacts of disposal, if any, are addressed to the maximum extent practicable. This includes provisions to avoid and minimize potential impacts to artificial reefs and cultural resources. The SMMP for the proposed modified ODMDS also addresses management of the site to ensure adverse mounding does not occur and ensures that disposal events minimize interference with other uses of ocean waters near the proposed modified ODMDS

d. MPRSA criteria

In evaluating the proposed modified ODMDS, the EPA assessed the site according to the criteria of the MPRSA, with emphasis on the general and specific regulatory criteria of 40 CFR part 228, to determine whether the proposed site designation satisfies those criteria. The EPA's *Draft Environmental Assessment for Modification of the Ocean Dredged Material Disposal Site Mobile, Alabama, September 2018 (DEA)*, provides an extensive evaluation of the criteria and other related factors for the modification of the existing ODMDS.

General Criteria (40 CFR 228.5)

(1) Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).

The location of the proposed modified ODMDS was screened in 1982 by the USACE as part of their evaluation of the area for selection of a location for ocean dumping of dredged material under Section 103 of MPRSA, as there was no EPA designated ODMDS at the time. That evaluation included considerations of potential interference with other activities in the marine environment including avoiding areas of existing critical fisheries or shellfisheries, and regions of heavy commercial or recreational navigation. These evaluations were re-considered from 2002 through to the present time, as the proposed modified ODMDS continued to be assessed.

(2) Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

The proposed ODMDS modification area will be used for disposal of suitable dredged material as determined by Section 103 of the MPRSA. Based on the USACE and EPA sediment testing and evaluation of dredged maintenance material and proposed new work material, disposal is not expected to have any long-term impact on water quality. The existing Mobile ODMDS and proposed modified ODMDS are located sufficiently far from shore (two to six miles) and fisheries resources to allow temporary water quality disturbances caused by

placement of dredged material to be reduced to ambient conditions before reaching any environmentally sensitive areas.

(3) If at any time during or after disposal site evaluation studies, it is determined that existing disposal sites presently approved on an interim basis for ocean dumping do not meet the criteria for site selection set forth in Sections 228.5 through 228.6, the use of such sites will be terminated as soon as suitable alternate disposal sites can be designated (40 CFR 228.5 (c)).

This criterion has been removed from the regulations and no longer applies.

(4) The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

The location, size, and configuration of the proposed modified ODMDS provides long-term capacity, while also permitting effective site management, site monitoring, and limiting environmental impacts to the surrounding area to the greatest extent practicable.

Based on 25 years of projected new work and maintenance dredging, and permitted dredged material disposal needs, it is estimated that the proposed modified ODMDS should be approximately 24 nmi² in size to meet the anticipated long-term disposal needs of the area. This would provide the proposed modified ODMDS with an estimated capacity of approximately 260 million cubic yards, which is sufficient to manage risk, account for future unknown disposal operations from private entities, and provides a margin of navigation safety.

By adding approximately 19 nmi² to the existing Mobile ODMDS, the total area of the proposed modified Mobile ODMDS would be 23.8 nmi². An ODMDS of this size and capacity will provide a long-term ocean disposal option for the Mobile Bay area.

When determining the size of the proposed site, the ability to implement effective monitoring and surveillance programs was considered to ensure that the environment of the site could be protected, and that navigational safety would not be compromised by the mounding of dredged material, which could result in adverse wave conditions. A SMMP is being developed and will be implemented to determine if disposal at the site is significantly affecting adjacent areas and to detect the presence of adverse effects. At a minimum, the monitoring program will consist of bathymetric surveys, sediment grain size analysis, chemical analysis of constituents of concern in the sediments, and a health assessment of the benthic community.

(5) EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).

Locating the disposal site near the continental shelf is not feasible and would be cost prohibitive. Transporting material to and performing long-term monitoring of a site located off the continental shelf is not economically or operationally feasible.

Specific Criteria (40 CFR 228.6)

(1) Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1)).

The proposed modified ODMDS is in the Gulf of Mexico, between two and six miles offshore of Dauphin Island, Alabama. Water depths range from -34 to -57 feet (10.4 to 17.4 meters) with an overall average depth of -45 feet (13.7 meters). Sediments consist of sands to clays, with various mixtures of sand, silts, and clays. Most areas in the proposed modified ODMDS have a higher percentage of silt/clay than sand. There tends to be slightly more fine material in the northern portion of the site, and more fine sand on the southern portion of the proposed modified ODMDS. There is a shallower mound (approximately -18 feet MLLW)

located in the southeastern portion of the site, where material has historically been placed for disposal. There are numerous oil and gas wells located throughout the proposed expansion area. The September 2018 DEA contains a map of the proposed ODMDS modification.

(2) Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

The proposed modified ODMDS has been selected to avoid the presence of any exclusive breeding, spawning, nursery, feeding, or passage areas for adult or juvenile phases of living resources.

(3) Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).

The center of the proposed modified ODMDS is several miles from any beaches or amenity areas. No significant impacts to beaches or amenity areas associated with the existing Mobile ODMDS have been detected.

(4) Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).

Only suitable dredged material that meets the EPA Ocean Dumping Criteria in 40 CFR 220-229 and receives a permit or is otherwise authorized for dumping by USACE will be disposed in the proposed modified ODMDS. Dredged materials dumped in this area will be primarily silts and clays with some sands that originate from the Federal Mobile Harbor navigation project. Average yearly disposal of dredged material into the proposed modified ODMDS is expected to be approximately 2.9 million cubic yards of maintenance and new work dredged material. Hopper dredge, barge, and scow combinations are the usual vehicles of transport for the dredged material, resulting in release of dredged material closer to the bottom of the site. None of the material is packaged in any manner.

Under section 103 of the MPRSA, USACE is the Federal agency that decides whether to issue a permit authorizing the ocean disposal of dredged materials. In the case of Federal navigation projects involving ocean disposal of dredged materials, USACE is subject to MPRSA, but does not require a USACE permit. USACE relies on EPA's ocean dumping criteria when evaluating permit requests for (and implementing Federal projects involving) the transportation of dredged material for the purpose of dumping it into ocean waters. MPRSA permits and Federal projects involving ocean dumping of dredged material are subject to EPA review and concurrence. EPA may concur with or without conditions or decline to concur on the permit, i.e. non-concur. If EPA concurs with conditions, the final permit must include those conditions. If EPA declines to concur (non-concurs) on an ocean dumping permit for dredged material, the USACE cannot issue the permit.

(5) Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).

The EPA expects monitoring and surveillance at the proposed modified ODMDS to be feasible and readily performed from ocean or regional class research vessels. The entire area of the proposed modified ODMDS has been surveyed and sampled in 2009 and 2017. The EPA will monitor the site for physical, biological and chemical attributes as well as for potential impacts. Bathymetric surveys will be conducted routinely, and benthic infauna and epibenthic organisms will be monitored, as described in the SMMP for the site.

(6) Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)).

Current velocities are greatest at the water's surface due to wind and wave action. Intermediate and bottom layer currents are driven by thermohaline and tidal circulations.

Currents measured at gauge stations surrounding the ODMDS are predominantly to the west or southwest on the order of 10-30 centimeters per second (cm/s).

(7) Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)).

Previous disposal of dredged material in the existing Mobile ODMDS has resulted in temporary increases in suspended sediment concentrations during disposal operations, localized mounding within the site, burial of benthic organisms within the site, slight changes in the abundance and composition of benthic assemblages, and changes in the sediment composition from sandy sediments to finer-grained silts. Short-term, long-term, and cumulative effects of dredged material disposal in the proposed modified ODMDS would be similar to those for the existing Mobile ODMDS.

(8) Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).

There will be minor, short-term interferences with commercial and recreational boat traffic during the transport of dredged material to the proposed modified ODMDS. There are several oil and gas extraction platforms in both the proposed and existing Mobile ODMDS. The site has not been identified as an area of special scientific importance. There are no aquaculture areas near the site. There may be recreational fishing in the area. The likelihood of direct interference with these activities is low, provided there is close communication and coordination among users of the ocean resources. There is one artificial reef site located approximately a quarter mile south of the proposed modified ODMDS. The SMMP for the proposed modified ODMDS contains provisions for corrective measures if impacts to the artificial reef related to dredged material

disposal are identified. Additionally, modification of the ODMDS will allow for disposal to occur farther away from the artificial reef than the currently-sized site allows.

(9) *The Existing Water Quality and Ecology of the Sites as Determined by Available Data or Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9)).*

Water quality of the existing site is typical of the Gulf of Mexico. Water and sediment quality analyses conducted in the vicinity of the proposed modified ODMDS and experience with past disposals in the existing Mobile ODMDS have not identified any adverse water quality impacts from ocean disposal of dredged material. The site supports benthic and epibenthic fauna characteristic of the shallow Gulf of Mexico and are widespread off of the Gulf coast.

(10) *Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a) (10)).*

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the proposed modified ODMDS. Disposal of dredged material, as well as monitoring, has been ongoing for the past 40 to 50 years. Nuisance species have not been found. The dredged material to be disposed of at the ODMDS is expected to be from similar locations to those dredged previously, therefore it is expected that any benthic organisms transported to the site would be relatively similar in nature to those already there.

(11) *Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a) (11)).*

A maritime investigation of this site was conducted in 1982 to identify areas of high and low probability of submerged resources. Past efforts showed the presence of magnetic anomalies that

may be indicative of potential resources. Until further analysis is conducted, these anomalies should be avoided in the proposed modified Mobile ODMDS.

The SMMP for the ODMDS contains measures to ensure that resources identified in up-to-date maritime investigations are avoided and are not adversely affected by dredged material disposal.

III. Environmental Statutory Review - National Environmental Policy Act of 1969, as amended (NEPA); Magnuson-Stevens Fisheries Conservation and Management Act (MSA); Marine Mammal Protection Act (MMPA); Coastal Zone Management Act (CZMA); Endangered Species Act, as amended (ESA); National Historic Preservation Act, as amended (NHPA)

a. NEPA

The EPA's primary voluntary NEPA document for expanding the existing Mobile ODMDS is the *Draft Environmental Assessment for Modification of the Mobile ODMDS, Mobile, Alabama, September 2018* (DEA), prepared by the EPA in cooperation with the USACE. Anyone desiring a copy of the DEA may obtain one from the addresses given above. This document was released for public review and comment on September 26, 2018. The public comment period on the Draft Environmental Assessment (DEA) closed on October 29, 2018.

The EPA received four comment letters on the DEA. There were three main concerns expressed in those letters: 1) potential movement of disposed material impacting nearby artificial reefs; 2) consideration of impacts to the giant manta ray, a newly listed threatened species; and 3) the age of the existing cultural resource surveys. No objections to the proposed modification of the Mobile ODMDS were received. The EPA and USACE responded to all comments and they will be provided in the Final Environmental Assessment (FEA) for this proposed action.

The DEA and its Appendices provide the threshold environmental review for modification of the ODMDS. The information from the DEA is used above, in the discussion of the ocean dumping criteria, and can be provided upon written request, using the contact information provided in this document.

The proposed action discussed in the DEA is the permanent designation of a modified ODMDS offshore Mobile, Alabama. The purpose of the proposed action is to provide an environmentally acceptable option for the ocean disposal of dredged material. The need for the proposed modified ODMDS is based on a demonstrated USACE need for ocean disposal of dredged material from the Mobile Harbor Federal Navigation Project, including the potential for deepening and widening portions of the Project. The need for ocean disposal for these and other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the USACE process for reviewing ocean disposal for private/Federal actions and a public review process for its own actions to ocean dump dredged material from Federal Projects. These permit/authorization evaluations will include evaluation of disposal alternatives.

The DEA discusses the need for the proposed modified ODMDS and examines ocean disposal site alternatives to the proposed actions. The need for expanding the existing Mobile ODMDS is based on future capacity modeling, historical dredging volumes, estimated dredging volumes for proposed projects, and limited capacity of upland disposal facilities in the area.

The following ocean disposal alternatives were considered in the DEA:

No Action Alternative

The No Action Alternative is defined as not modifying the size of the existing Mobile ODMDS. Implementation of this alternative would not address the need for an adequately sized

ocean dumpsite to accommodate Federal channel dredging projections, and/or any future private needs for ocean disposal. The existing Mobile ODMDS is too small and only provides disposal capacity for up to five years. It is not large enough to meet the existing and projected disposal needs for proposed Federal new work and O&M projects. As a result, the No Action Alternative does not meet the proposed action's purpose and need. However, it was evaluated in the DEA as a basis to compare the effects of the other alternatives considered.

Alternative 2: Modification of the existing Mobile ODMDS to encompass a larger area capable of meeting the capacity needs of the next 25 years (Preferred Alternative).

Modification of the existing Mobile ODMDS to encompass a larger area capable of meeting the capacity needs of the next 25 years (approximately 25 nmi²) is the preferred alternative and considered the most viable option. A detailed justification for this preferred alternative is included in *Section 1.3 Purpose and Need for the Proposed Action* in the DEA. The existing Mobile ODMDS is relatively small and has a limited capacity of approximately five years if continued use occurs. Modifying the existing Mobile ODMDS to increase capacity for the next 25 years would sustain the disposal needs for the federally authorized Mobile Harbor navigation project (including proposed deepening and widening), along with providing a disposal option for private interests. It is the most economic and environmentally feasible option.

Alternative 3: Modification of the existing Mobile ODMDS to encompass a much larger area capable of meeting the capacity needs of the next 50 years (approximately 46 nmi²).

Modification of the existing Mobile ODMDS to encompass a much larger area capable of meeting the capacity needs of the next 50 years was considered as the originally preferable alternative for this proposed modification. As such, the May 2010 *Final Report: Mobile ODMDS Designation Study, Mobile AL* was conducted based upon this larger site. Although designating

the larger area as a modified ODMDS would provide more than adequate site capacity, the overly large-sized ODMDS would far exceed the actual projected need for a 25-year project life. With the projections set forth in *Section 1.3 Purpose and Need for the Proposed Action* of the DEA, a site more adequately sized was selected as the preferred alternative (Alternative 2).

Alternative 4: Designation of a new site further from the areas where the Federal navigational dredging will occur.

This alternative would involve designation of a new site further south (away from shore) than the existing Mobile ODMDS. This new site (referred to as the Mobile-South site) was previously considered by the USACE in the mid-1980s under section 103 of the MPRSA. Under section 103 of the MPRSA, the USACE, in consultation with EPA, can select an “alternative” site for dredged material disposal for short-term use in the cases where it is not feasible to use a designated ocean disposal site. EPA must concur on use of “alternative” ocean sites selected by USACE for the disposal of dredged material. Disposal at a USACE-selected “alternative” site shall be limited to a period not greater than five years unless the site is subsequently designated by EPA pursuant to section 102 of the MPRSA. This site was never used for the disposal of dredged material. Primary concerns with the use of the Mobile South site in the 1980s were safety, logistics, and additional cost. These concerns still exist today. The sailing path for a hopper or scow from Mobile Harbor to the Mobile-South site would require traversing through two different Safety Fairways, one in a parallel direction and the other at a perpendicular angle to the Federal channel. Due to large vessel passing restrictions in the Mobile Ship Channel, typically there are at least 12 deep draft ships holding position in the Safety Fairway awaiting their turn to enter Mobile Harbor. Using the Mobile-South site would require constant coordination and logistical planning given the high volume of daily loads going out to the site, in

addition to the added safety concerns when towing scows on long lines in rough seas through numerous anchored deep draft vessels.

The additional sail time added using the Mobile South site is estimated to be approximately 25% to 30% greater, which, under the current method of rental contracts, represents \$2,000,000 to \$2,500,000 per contract (or \$4,000,000 to \$5,000,000 annually). Therefore, designation of a new site farther from shore was not proposed as a preferred alternative.

b. MSA

The USACE, in conjunction with EPA, submitted an essential fish habitat (EFH) assessment, pursuant to Section 305(b), 16 U.S.C. 1855(b)(2), of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d, to the National Marine Fisheries Service (NMFS) on December 19, 2002. The original assessment considered the entire Mobile-North (46 nmi²) site. The USACE determined that the modification of the existing Mobile ODMDS will not significantly affect managed species or EFH. In a letter dated January 17, 2003, NMFS responded that no EFH conservation recommendations were required for the proposed action. In an email dated March 17, 2016, USACE contacted NMFS, inquiring if the current proposed project (approximately 24 nmi² ODMDS) was still consistent with the initial consultation. NMFS responded that they believed that no further consultation for the project was required. The EPA notified NMFS of the publication of the DEA by letter on September 25, 2018 and received no further communication regarding the proposed action.

c. CZMA

Pursuant to an Office of Water policy memorandum dated October 23, 1989, the EPA has evaluated the proposed site designations for consistency with the State of Alabama's (the State) approved coastal zone management program. On behalf of the EPA, the USACE, Mobile District

determined that the proposed action is consistent with the Alabama Coastal Management Program to the maximum extent practicable. Alabama Department of Environmental Management (ADEM) issued Coastal Zone Consistency for the Mobile Harbor Federal Navigation Project on March 9, 2017, which included the modification of the existing Mobile ODMDS. The EPA notified the ADEM of the publication of the DEA by public notice and by letter on September 25, 2018 and received no further communication regarding the proposed action.

d. ESA

The ESA, as amended, 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with NMFS and the U.S. Fish and Wildlife Service (USFWS) to ensure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of any critical habitat. The EPA assessed the potential effects of modifying the Mobile ODMDS on aquatic and wildlife species and submitted the DEA to the NMFS and USFWS on September 25, 2018. The EPA concluded that the proposed project would not adversely affect any threatened or endangered species, nor would it adversely modify any designated critical habitat. In a letter dated October 8, 2018, the USFWS concurred with the EPA's determination that the proposed action is not likely to adversely affect listed endangered or threatened species under the jurisdiction of the USFWS. In an email dated November 26, 2018, NMFS informed the EPA that a consultation for the giant manta ray (*Manta birostris*) was needed. The EPA concluded that the proposed action may affect but was not likely to adversely affect the species, added that evaluation and determination to the EA, and is working with NMFS to finalize the consultation.

Consultation with NMFS will be completed prior to final rule-making or any final NEPA decision.

e. NHPA

The USACE and the EPA initiated consultation with the State of Alabama's Historic Preservation Officer (SHPO) on September 25, 2018 to address the NHPA, 16 U.S.C. 470 to 470a-2, which requires Federal agencies to consider the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register of Historic Places (NRHP). In a letter dated October 13, 2018, the Alabama Historical Commission (AHC) recommended more up to date maritime surveys in the proposed action area. The EPA added additional management provisions intended to be protective of potential cultural resources into the EA and SMMP, including phased use of the proposed ODMDS to avoid areas previously unimpacted by dredged material disposal, and is working with the AHC to finalize NHPA consultation. Any requirements to protect cultural resources will be concluded based upon additional consultation with the SHPO and will be incorporated into project commitments prior to final rulemaking or any final NEPA decision.

IV. Statutory and Executive Order Reviews

This rule proposes to modify the Mobile ODMDS pursuant to Section 102 of the MPRSA. This proposed action complies with applicable executive orders and statutory provisions as follows:

a. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

b. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This proposed site designation, does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

c. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA determined that this proposed action will not have a significant economic impact on small entities because the proposed rule will only have the effect of regulating the location of site to be used for the disposal of dredged material in

ocean waters. After considering the economic impacts of this proposed rule, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

d. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

e. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicited comments on this proposed action from State and local officials.

f. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 because the modification of the existing Mobile ODMDS will not have a direct effect on Indian

Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action. The EPA specifically solicits additional comments on this proposed action from tribal officials.

g. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5-501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The proposed action concerns the modification of the existing Mobile ODMDS and only has the effect of providing a designated location for ocean disposal of dredged material pursuant to Section 102 (c) of the MPRSA. However, the EPA welcomes comments on this proposed action related to this Executive Order.

h. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355) because it is not a "significant regulatory action" as defined under Executive Order 12866. However, we welcome comments on this proposed action related to this Executive Order.

i. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed action includes environmental monitoring and measurement as described in the EPA's proposed SMMP. The EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the proposed modified ODMDS. The Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the SMMP. The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this proposed action.

j. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income

populations in the United States. The EPA determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The EPA has assessed the overall protectiveness of modifying the existing Mobile ODMDS against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable. The EPA welcomes comments on this proposed action related to this Executive Order.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: June 7, 2019.

Mary S. Walker
Regional Administrator, Region 4.

For the reasons set out in the preamble, The EPA proposes to amend chapter I, title 40 of the Code of Federal Register as follows:

PART 228 – CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418

2. Section 228.15 is amended by revising paragraphs (h)(14) (i) through (iii) and (vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(14) * * *

(i) *Location:* Corner Coordinates (NAD 1983) 30° 13.0' N, 88° 08.8' W; 30° 09.6' N, 88° 04.8' W; 30° 08.5' N, 88° 05.8' W; 30° 08.5' N, 88° 12.8' W; 30° 12.4' N, 88° 12.8' W

(ii) *Size:* Approximately 23.8 square nautical miles in size.

(iii) *Depth:* Ranges from approximately 34 to 57 feet (10.4 to 17.4 meters).

* * * * *

(vi) *Restrictions:* (A) Disposal shall be limited to dredged material from the Mobile, Alabama area;

(B) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 220-228;

(C) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(D) Monitoring, as specified in the currently-approved SMMP, is required.

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